IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5149 of 2001

With

CIVIL APPLICATION NO. 12801 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORP.

Versus

ARVIND RAMKRUSHNA PATEL

Appearance:

1. First Appeal No. 5149 of 2001
MR P.S. PATEL for Petitioner No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE N.G.NANDI

Date of decision: 24/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Heard Shri. P.S. Patel, learned counsel for appellant Corporation.

2. The appellant Corporation has challenged in this appeal the impugned judgment & order dated 13-8-1999 passed by learned Judge, Small Causes Court in M.V. Appeal No. 8093 of 1994, whereby learned Judge has reduced the GRV and fixed it at Rs.11,105/- for the year 1993-94.

3. Shri. Patel for the appellant Corporation has vehemently submitted that, learned Judge has committed grave error in simply relying upon the agreement to sale produced upon mark 3/2, wherein the value of the property is shown Rs. 4,76,000/- for the shops bearing No. 8, 9, and 10 of the same area. He submitted that, there are instances where different amount is mentioned in agreement to sale and this is what has been stated in actual sale deed . It may be so. However, in the instant case the Corporation has not called upon the assessee to produce any such sale deed wherein different amount is shown. Before the learned Judge no such objection was raised, therefore he was not in a position to deal with the same. Such type of submissions cannot be considered by this Court for the first time in appeal in absence of any positive evidence led by the Corporation. Considering the total value of Rs.4,76,000/- for different shops, learned Judge was right in fixing value of one shop at Rs.1,58,667/-. Considering 7 % thereof, GRV would come to Rs.11,105/which is fixed by the learned Judge. Such type of order cannot be interfered by this Court in appeal.

4. In view of the above discussions, this appeal fails and it is dismissed. In view of the appeal being dismissed, no order in Civil Application No. 12801 of 2001, accordingly it is dismissed. No order as to costs.

Dt: 24-1-2002 (B.J. Shethna, J)

(N.G. Nandi, J)

/vgn